

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 882 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

CHANDRAKANT N VYAS

Versus

CHIEF OFFICER

Appearance:

MR JR NANAVATI for Petitioner

MR HS MUNSHAW for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 23/03/2000

ORAL JUDGEMENT

#. This is an appeal against the judgement and order dated 31st August, 1981 of Civil Judge (SD), Bhavnagar dismissing the application of the appellant claiming compensation for the injuries sustained in his leg which ultimately shortened the leg of the appellant.

Application was moved under Workmen Compensation Act.

#. Brief facts are that the applicant was serving as conductor cum cashier in Bhavnagar Municipality on salary of Rs.607/- per month. His residential house is at a distance of 7 kms. His duty hours were from 10.00 A.M. On 6-4-1979 in between 9.30 A.M. to 9.45 A.M. when he was going on motor bike - Suvega for attending his duties, on the way, he met with the accident. He was removed to Sir, T. Hospital, Bhavnagar, where he took treatment till 10-4-1979. Thereafter, he took treatment in hospital of Dr.R.B.Patel. There was shortening of his left limb and so he has been permanently disabled to do any work. Compensation was claimed from the respondent but with no result, hence an application was moved claiming compensation of Rs.24,255.00 together with penalty amounting to Rs.12,122.50 ps that is in all Rs.36,377.50 ps were claimed by the appellant.

#. The claim was resisted on variety of grounds.

#. After considering the evidence, the learned Civil Judge dismissed the application of the appellant, hence this appeal.

#. After hearing Mr.J.R.Nanavati, learned counsel for the appellant and examining judgement under appeal, I feel that on facts as well as on law, this case is fully covered by the pronouncement of the Apex Court in REGIONAL DIRECTOR, E.S.I. CORPORATION VS. FRANCIS DE COSTA, AIR 1997 SC 433. The facts of two cases are almost identical.

#. The facts of the case before the Apex Court were that the employee while on his way to the factory, where he was employed, had met with an accident which took place 1 km away from the place of his employment. On these facts, the Apex Court held that injuries sustained by him in the said accident could not be said to have been caused by an accident arising out of and in the course of his employment. The Apex Court observed on facts that if the employee's work shift begins at 4.30 P.M., any accident before that time will not be "in the course of his employment". The journey to the factory may have been undertaken for working at the factory at 4.30 P.M.. But this journey was certainly not in course of employment. If "employment" begins from the moment the employee sets out from his house for the factory, then even if the employee stumbles and falls down at the door step of his house, the accident will have to be treated as to have taken place in the course of his employment.

This interpretation leads to absurdity and has to be avoided.

#. The facts before me in this appeal are practically admitted and established that on 6.4.1979 the accident occurred in between 9.30 a.m. to 9.45 a.m. It is further admitted and established that duty of the appellant commenced and used to commence from 10.00 a.m. everyday. It is also admitted and established that the applicant was coming from his residence on motor bike Suvega and was going to attend his duty in the office of the respondent. The accident took place between 9.30 a.m. to 9.45 a.m. on way to the office of the appellant before duty hours commenced. Same were the facts before the Apex Court. Consequently any injury which was caused in the accident in question cannot be termed and held to be injury arising out of accident in the course of employment. Principle of notional extension of the course of employment, in view of the Apex Court's verdict in the above case, cannot be extended beyond the facts of the case before me. Since the case is fully covered by the pronouncement of the Apex Court in REGIONAL DIRECTOR, E.S.I. CORPORATION (SUPRA), I do not find any merit in this appeal which is liable to be dismissed. The judgment and order passed by the lower court does not suffer from any illegality.

#. The appeal is therefore dismissed with no order as to costs.

Date : 23-3-2000 [D.C. Srivastava, J.]

#kailash#